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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

SCOTT AND RHONDA BURNETT,)	
RYAN HENDRICKSON, JEROD BREIT,)	
SCOTT TRUPIANO, and JEREMY KEEL,)	
on behalf of themselves and all)	
others similarly situated,)	
Plaintiffs,)	Case No.
vs.)	19-CV-00332-SRB
)	
THE NATIONAL ASSOCIATION OF)	Kansas City, Missouri
REALTORS, et al.,)	May 9, 2024
Defendants.)	

.....
TRANSCRIPT OF SETTLEMENT CONFERENCE
BEFORE THE HONORABLE STEPHEN R. BOUGH
UNITED STATES DISTRICT COURT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

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1 THE COURT: It looks like it's now ten o'clock. We
2 are here on the case of Burnett, et al. v. NAR, et al., Case
3 No. 19-332. Rather than have every lawyer enter an
4 appearance, I'd like just one person identify -- whoever's
5 going to be speaking, enter an appearance, and, of course, we
6 can supplement that if needed.

7 From the plaintiff.

8 MR. DIRKS: Morning, Your Honor. Eric Dirks for the
9 plaintiffs, and Beatrice Franklin will be riding shotgun and
10 may have some things to say.

11 THE COURT: Thank you.

12 MR. VAN OORT: Good morning, Your Honor. Aaron Van
13 Oort for Anywhere Real Estate.

14 MR. LeVEE: Morning, Your Honor. Nice to see you.
15 Jeff LeVee on behalf of RE/MAX LLC.

16 THE COURT: Welcome back, sir.

17 MR. LeVEE: Thank you.

18 MR. BERSHTEYN: Good morning, Your Honor. Boris
19 Bershteyn on behalf of Keller Williams Realty, Inc.

20 THE COURT: Welcome. Well, very good.

21 The first thing I would like to address, and I
22 distributed to everyone, this morning at 5:06 a.m., I received
23 an email from Mr. Anthony Phillips, who is identified by his
24 email as the president of the Luxury Companies in Las Vegas,
25 Nevada, and he sent a rather amusing email comparing this

1 settlement to a Supreme Variety Taco Pack. Clearly this
2 individual does not appreciate the settlement and does not
3 wish it to be resolved.

4 They did not follow the rules on stating an
5 objection; so normally I would not consider it. The reason I
6 printed it out and am talking about it is on page 3 of that
7 email, it alleges what I think could be a conflict between
8 myself and counsel for plaintiff Matt Dameron.

9 I think it's come up a couple times over the last
10 five years that my wife is on city council. Because of that,
11 I'm not an expert in legal ethics but spent way too much time
12 looking at the legal ethics rules on this because my wife is
13 an attorney as well in this community. So the ethics rules
14 make it abundantly clear if I know someone is donating to my
15 wife, then I need to put them on the conflicts list.

16 I did not know Mr. Dameron donated to my wife. The
17 legal ethic rules say if I don't go look at these disclosures,
18 then I can just in essence not have to know who donated to her
19 and that's how it can go.

20 So this is the first time in the five or six years
21 that she's been on the council that this has come up. So I
22 went back and looked at those ethics rules again today and
23 also went to the disclosures that were hyperlinked in this
24 email.

25 So there's a reference to Taxpayers Unlimited. By

1 my calculation, Taxpayer Unlimited is a PAC associated with
2 the local firefighters. The local union is Local 42 by all
3 accounts of their financial disclosures. So Local 42 I don't
4 believe is controlled by Mr. Ketchmark or Mr. Dameron, which
5 is somewhat referenced in page 3 of that email.

6 But I did discover in particular that in 2019,
7 Mr. Dameron did in fact donate to my wife, but that was my
8 first opportunity ever to look at one of her financial
9 disclosures. So it was interesting for me to discover that on
10 October 29th, 2019, that the Kansas City Association of
11 Realtors PAC donated to my wife.

12 I look around this room and go through Bryan Cave or
13 Polsinelli or Lathrop or Shook or any other major firm appears
14 to have donated to my wife as well. So I believe the ethics
15 rules require me to ask each of the parties if they would like
16 to conflict me off the case, and if you would, I'll be more
17 than glad to step down based upon that.

18 I have not looked at all of these disclosures.
19 Again, this is my -- got this early this morning. As you guys
20 sadly know, I get up too early and so gave me a chance to look
21 through those disclosures.

22 But from plaintiff, do you wish me to conflict
23 myself off this case based upon the Kansas City Association of
24 Realtor PAC donating to my wife in 2019?

25 MR. KETCHMARK: No, Your Honor.

1 THE COURT: How about from Anywhere, would you like
2 for me to conflict off this list based upon Mr. Dameron's
3 donation to my wife in 2019?

4 MR. VAN OORT: No, Your Honor.

5 THE COURT: From RE/MAX?

6 MR. LeVEE: No, Your Honor.

7 THE COURT: Keller Williams?

8 MR. BERSHTEYN: No, Your Honor.

9 THE COURT: Would anyone else like to be heard on
10 this potential conflict?

11 Mr. Phillips also references sending this on to the
12 U.S. Attorney, the Department of Justice, and the FTC; and so
13 I beat him to the punch and sent it on to Teresa Moore
14 downstairs, our U.S. Attorney, so that she can do what law
15 enforcement needs to do for judicial ethics.

16 I have reviewed the motions and the briefings that
17 have been filed. This is plaintiffs' motion, and so,
18 Mr. Dirks, Ms. Franklin.

19 MR. DIRKS: Thank you, Your Honor.

20 Just to start things off, if it's okay with the
21 court, I might give you five minutes, just overview of why the
22 settlements should be approved, and then turn it over to the
23 defense counsel that I don't think have a lot to add. And
24 then perhaps the objectors would have their opportunity, and
25 then if the court would oblige me to come back, me and

1 Ms. Franklin, to rebut what the objectors have to say.

2 THE COURT: Outstanding plan.

3 MR. DIRKS: Okay. Thank you, Your Honor.

4 Well, I'm pleased again to be here after five years
5 of litigation for final approval of these settlements. All
6 the case law and all the common sense support approving these
7 motions -- this motion. The settlements provide \$208.5
8 million to the class, practice changes from all three settling
9 defendants, and importantly peace is achieved. The war is
10 over with respect to these defendants, and more relief is on
11 the way, as the court knows.

12 At the preliminary approval stage, the court held
13 that it's likely to approve these settlements and directed us
14 to issue notice. And that's what we did. And the notice
15 process was a success.

16 Postcards to over 10 million folks, emails to over
17 25 million folks, a digital campaign with 300 -- more than 300
18 impressions, a website with 5 million page views, 415 press
19 stories, and an overall, when you combine it all, a reach of
20 over 95 percent, which exceeds what we told the court our plan
21 was. So by any measure, it's a success.

22 It's also been well-received. We continue to
23 receive claims every day. So as of today, we're over 200,000
24 claims, and there's a whole other year for folks to make
25 claims on the settlement. Only 12 objectors, only 61

1 exclusions.

2 As the court listens today, I ask that it keep three
3 principles in mind. One, these settlements were hard fought.
4 It was hard-fought litigation and hard-fought negotiations.
5 We walked away from the table many times over a period of
6 years. We worked diligently on this case and to reach these
7 settlements. We didn't leave a dollar on the table.

8 Two, class settlements should be hospitably welcome,
9 and the presumption is in favor of approval even if there's a
10 small minority of folks who don't like the settlement.

11 Three, the law and common sense favor nationwide
12 settlement and a nationwide release and a release that
13 releases all claims arising from the same factual predicate,
14 the same conspiracy. That means that the law and common sense
15 require you to overrule the objections.

16 Little bit of housekeeping. One, I think the court
17 may know the PulteGroup is not here. We've been working with
18 them to try to satisfy their concerns. Things are going well.
19 They did request that to the extent the court is looking at
20 our proposed order, that in paragraph 38, we remove -- and we
21 agree to this -- we remove the sentence, Pulte could have
22 availed itself of the same streamlined process if it had
23 asked, but it appears Pulte did not do so. We -- to the
24 extent the court's looking at that, we would agree to strike
25 that.

1 The second housekeeping issue is in the proposed
2 order because the court just a few weeks ago denied a 54(b)
3 certification request with respect to the HomeServices
4 judgment, I wanted to point out that we're requesting that
5 here. I didn't want the court to think we were, you know,
6 sneaking that in there, but here it's a completely different
7 context, a completely different situation.

8 In the HomeServices issue, they had opposed it, and
9 there was an issue with setoff and the finality of the
10 settlements would cause problems. Here if you look at page 26
11 of our brief, we set out a -- several cases that stand for the
12 proposition that in a partial settlement like this, you go
13 ahead and you approve the 54(b) request.

14 Happy to answer any questions you have about that.
15 I'm done. I'm proud to be presenting these settlements, which
16 are by any measure fair, reasonable, and adequate.

17 THE COURT: Thank you, sir.

18 MR. VAN OORT: Your Honor, again Aaron Van Oort for
19 Anywhere Real Estate. You have our papers. I will not repeat
20 what we've said in them other than to say we agree the
21 settlement is fair, reasonable, and adequate, and we strongly
22 support its approval.

23 If Your Honor has questions, I'll be glad to answer
24 them. Otherwise, that's all I have planned.

25 THE COURT: Thank you, sir.

1 MR. LeVEE: Your Honor, Jeff LeVee on behalf of
2 RE/MAX. I fully endorse what my colleague representing
3 Anywhere Real Estate has just said. We literally have nothing
4 to add, including endorsing what Mr. Dirks has provided to the
5 court. And we are here to answer questions, if any, but I
6 don't want to take any additional time.

7 THE COURT: Thank you, sir.

8 MR. BERSHTEYN: Your Honor, Boris Bershteyn for
9 Keller Williams. Keller Williams likewise strongly supports
10 approval of the settlement, and we'd be pleased to rest on the
11 papers and Mr. Dirks' presentation. Should there be any
12 questions we can answer after the objectors speak, we, of
13 course, stand ready to do so.

14 THE COURT: Thank you.

15 In no particular order, I printed off all these
16 objections, and so we have counsel from South Carolina, my
17 second favorite state besides Missouri. Come on up, sir. Are
18 you Mr. Slade or you Mr. --

19 MR. KNIE: I'm Mr. Knie, Your Honor.

20 THE COURT: Mr. Knie, welcome.

21 MR. KNIE: If I can climb over the luggage, I'll get
22 up there.

23 THE COURT: You're going to make it just fine. Have
24 you ever been to Isle of Palms?

25 MR. KNIE: I have not.

1 THE COURT: If you want to come visit on 4th of
2 July, that's where I'll be.

3 MR. KNIE: I've not been to this part of the
4 country, but we've enjoyed it thus far.

5 THE COURT: Isle of Palms is north of Charleston.

6 MR. KNIE: Oh, have I been -- I'm a little hard of
7 hearing. I'm 77. Yes, I've been to Isle of Palms. Lovely
8 place.

9 THE COURT: Lovely place.

10 MR. KNIE: May it please the court. Matt Shealy,
11 Mitch Slade, and myself appear on behalf of South Carolina
12 objectors regarding both the amounts of the proposed
13 settlement and the terms thereof.

14 First and foremost, I feel like I need to point out
15 the obvious. This was a -- this was a \$1.7 billion verdict
16 for a class of 500,000 Missourians. Why should their verdict,
17 which they own, be diluted by 97 1/2 percent? This is a
18 fairness hearing; so I would respectfully submit the first
19 question the court should address is, is it fair to the
20 Missouri class?

21 With respect to the settlement notices, Your Honor,
22 Keller Williams, as you know, settled after trial. There was
23 no mention of the \$1.7 billion verdict in the notices that
24 went out. Specifically, in No. 5 it said the court did not
25 decide this case in favor of the plaintiffs or the defendants,

1 and we, as lawyers, understand what that means, but the
2 average citizen does not. Frankly, I think it was honestly a
3 misrepresentation.

4 With regard to all the notices, Your Honor, the
5 people that received the notices don't understand that they
6 don't have the right to sue the individual franchisees.
7 There's no mention of the vast number of victims and the
8 draining effect that it's going to have on the fund.

9 The summary mentions the costs, which are \$11
10 million, and certainly those costs were justified. But I
11 think the class deserves to know that \$11 million is going to
12 come from the fund.

13 Now, there are 37 million people, as we understand
14 it, that have a claim. They're going to receive between \$5
15 and \$10 each. That just does not seem fair. With respect to
16 the franchisees, the franchisees will be released, and they're
17 not going to have to pay anything for being released.

18 Without the active participation of franchisees,
19 this anticompetitive conspiracy could not have taken place.
20 They don't deserve a free pass. There is no consideration for
21 them being released.

22 With respect to the financial condition of Anywhere
23 and RE/MAX, in 2023, RE/MAX increased its compensation to its
24 executives by 40 percent. The CEO was paid a \$5 million bonus
25 for his leadership in obtaining what they believed was an

1 excellent settlement. In-house counsel got a \$1 million
2 bonus.

3 With respect to RE/MAX, it increased its executive
4 compensation 57 percent. I mean, that alone is 37 percent of
5 the settlement. Anywhere and RE/MAX are in a far better
6 financial condition than has been portrayed.

7 We retained a well-respected economist, Dr. Charles
8 Alford. I won't go through his report.

9 THE COURT: I read it.

10 MR. KNIE: I thought you had it, Your Honor. Thank
11 you.

12 Obviously we think his report is important. The
13 court, yourself, Your Honor, said in an in limine motion
14 defendants here have obviously made huge profits. This
15 conspiracy has been going on for decades.

16 We're all familiar with the settlements in big
17 tobacco. Same thing. Big tobacco had to pay over 25 years.
18 So why couldn't we do the same thing with these settling
19 defendants?

20 Now, with respect to the Keller Williams'
21 financials, we made it clear in our timely objection that we
22 could not evaluate the proposed Keller Williams' settlement
23 without financial data, and four days after we filed our
24 timely objection, we moved for discovery of the Keller
25 Williams' financials, and Dr. Alford submitted a second

1 declaration asking what he needed.

2 Instead of cooperating and giving us that financial
3 information, Keller Williams filed a lengthy response as to
4 why we should not get that information. Transparency is the
5 cornerstone to a fairness hearing. We asked plaintiffs'
6 counsel if we could have Keller Williams' financial data that
7 was disclosed to them. They said they'd get back to us.
8 We've never seen anything.

9 We think we're entitled to that, but more
10 importantly we believe that the court is entitled to that even
11 if it's in camera. We understand they're a private company,
12 but I don't know how the court could make a decision on this
13 matter without seeing Keller Williams' financials.

14 Now, Keller Williams had posted on their website
15 before the verdict what their annual sales volume was from
16 2019 to 2022. Their sales volume in those four years was
17 \$1.76 trillion. 3 percent of that amount is \$52.9 billion.
18 We're talking about them paying just \$70 million. That's --
19 they damaged their sellers by \$52.9 billion over that
20 four-year period.

21 Your Honor, Keller Williams suggests that they sent
22 out these 37 or 35 million dollar [sic] notices and the class
23 overwhelmingly embraced the settlement. That was their
24 language.

25 Well, 200,000 people responding is less than

1 one-half of 1 percent. Your Honor, we believe that what's
2 taking place here is an impermissible expansion of what was a
3 4 MLS class to an 800 MLS class.

4 Congress intended for there to be ample compensation
5 for victims of antitrust violations. These settlements can
6 hardly be considered as ample compensation.

7 Again, Your Honor, there is no binding effect on the
8 franchisees despite what these fine lawyers have said. The
9 language that they have put in the settlement agreements are
10 they will make clear and periodically remind, advise, and
11 periodically remind. In South Carolina, we call that best
12 efforts, which means nothing.

13 Even worse, the settlement agreements provide for a
14 sunset provision after five years. So it will be back to
15 business as usual, but in fact it's already business as usual.
16 We would ask two things of the court respectfully, Your Honor,
17 that the Keller Williams folks be required to disclose their
18 financials to the court before the court makes the decision;
19 that the notices be reworked; and we would humbly ask that
20 this court continue this matter until the November 26th
21 hearing for that to take place.

22 Thank you, Your Honor.

23 THE COURT: Thank you, sir.

24 Just to ensure that everybody has an opportunity to
25 be heard, I'm not sure if I've got a list of who all requested

1 time to be heard, but anybody here from Spring Way Center?

2 MR. HOROWITZ: Yes, sir, I am.

3 Good morning, Your Honor. Andrew Horowitz for
4 objectors Spring Way Center and Nancy Wehrheim.

5 THE COURT: Welcome.

6 MR. HOROWITZ: Thank you, Your Honor. May I
7 proceed?

8 THE COURT: Please.

9 MR. HOROWITZ: Good morning, Your Honor. May it
10 please the court.

11 Spring Way Center and Ms. Wehrheim brought these
12 objections because they strongly believe that the real estate
13 industry conspired for over three decades to take advantage of
14 the American home seller and that the named plaintiffs and
15 class counsel, despite engaging in three years of hard-fought
16 litigation, are not representing the interests of the absent
17 class members like Spring Way and Ms. Wehrheim.

18 As to Anywhere, the broker that my client sold their
19 properties through, the settlement is only 1.4 percent of its
20 EBITDA for the relevant damages period. The total EBITDA for
21 that period is \$5.8 billion. A settling defendant's financial
22 condition and ability to pay a higher settlement is a key
23 factor in determining the fairness of a class action
24 settlement.

25 And this is not novel. The Eighth Circuit

1 specifically has been clear on this since the *Grunin v.*
2 *International House of Pancakes* case in 1975. That's 513 F.2d
3 114.

4 This settlement fails to meaningfully address that
5 factor. As to Spring Way -- or, I'm sorry, as to Anywhere --
6 sorry. Class counsel claims that they conducted an analysis
7 of Anywhere's ability to pay while maintaining corporate
8 viability, something that is required as part of the
9 settlement process, but we don't see their work, Your Honor.
10 Instead we're just asked to take their word for it. Instead,
11 the -- we're asked to blindly trust it.

12 In fact, nobody in -- neither Anywhere nor the named
13 plaintiffs explain why Anywhere cannot afford to pay a larger
14 amount over a period of years let alone in a lump sum now.
15 Multiyear payouts are commonplace in large class action
16 settlements. The tobacco litigation settlement is a prime
17 example having paid out nearly \$200 billion and counting over
18 a 25-year period.

19 Moreover, plaintiffs rely on the declaration of
20 attorney Karl Barth to challenge the conclusion of the
21 objectors' economist Dr. Alford. While attorney Barth is a
22 CPA, his firm is also co-lead class counsel and, therefore,
23 stands to earn a contingency fee if the settlement is
24 approved.

25 It's well-established that experts cannot be paid

1 contingency fees, and that's probably why plaintiffs have
2 stopped short of actually calling him an expert. But that
3 doesn't change the fact that they rely on his declaration for
4 opinions that would not be admissible under -- except under
5 Rule 7.02, their expert testimony.

6 Mr. Barth's opinions, therefore, have no credibility
7 and should be disregarded, and based on the authority cited in
8 our rely brief that we filed yesterday, they may not even be
9 admissible at all.

10 And without Mr. Barth's opinions, class counsel has
11 no meaningful argument to rebut Dr. Alford's declaration.
12 Meanwhile, there's a clear financial motivation here. Class
13 counsel are seeking a significant percentage of an \$83.5
14 million settlement from Anywhere alone and more from the other
15 defendants in the settlement that is being heard today and the
16 other pending settlements.

17 To be clear, we respect their work and what they've
18 accomplished here, a lot of hard work, I'm sure, but the
19 plaintiff class members will barely get enough to pay for a
20 fast food meal. Yes, it's in my outline. I thought of it
21 before the guy from Las Vegas.

22 And meanwhile they were fleeced out of 3 percent on
23 average of the value of their homes, which for millions of
24 people is a single largest financial transaction of their
25 lifetimes.

1 It's axiomatic that all real estate is local, and
2 that's part of the reason the MDL panel denied class counsel's
3 motion to consolidate, something that they attempted to
4 orchestrate by filing the UMPA national class action only
5 after numerous local class actions had been already filed by
6 ourselves and other counsel.

7 To be clear, while the conspiracy originated with
8 NAR and was national in scope, we have to look at how it was
9 implemented and carried out across the country. There is a
10 reason after all that there is not a single nationwide
11 Multiple Listing Service. We believe that these market
12 nuances are important, but class counsel took no relevant
13 discovery for big swathes of the country.

14 For example, they haven't given any indication that
15 they looked in any way at the Pittsburgh area real estate
16 market where my clients are located. It's presumptuous for
17 class counsel to assume without investigating that they
18 understand the market in Pittsburgh.

19 We need to make sure that all class members,
20 wherever they're located, are treated fairly. Objectors have
21 an important role in protecting the interests of the absent
22 class members since the named plaintiffs are now jointly
23 advocating with the defendants for a settlement. Our judicial
24 system relies on an adversarial process to discern the merits
25 of the case.

1 But without objectors, there's no longer adverse
2 parties to make that system work. We're here to test the work
3 of the named plaintiffs and the defendants, and, Your Honor,
4 we submit that their work is one thing.

5 Ultimately the court is the final protector of the
6 interests of the absent class members, and, Your Honor, we
7 respectfully ask you to perform that function. Alternatively,
8 we join in the South Carolina objectors' request that this be
9 continued until the November fairness hearing when all of the
10 settlements can be viewed holistically.

11 And also, as Mr. Knie has pointed out, the jury
12 verdict of \$1.7 billion for the home sellers in Missouri is
13 being reduced by 97.5 percent by this settlement, and then
14 after that, it's diluted from half a million home sellers in
15 Missouri to home sellers in 49 other states.

16 This is perhaps the most critical, unfair aspect of
17 the proposed settlement, yet plaintiffs' papers and the class
18 notice fail to even mention it, nor do they provide any
19 justification for this massive transfer of funds from
20 Missourians to home sellers in 49 other states.

21 For this reason, in no universe can the proposed
22 settlement be construed as fair, reasonable, and adequate.

23 Thank you, Your Honor.

24 THE COURT: Thank you, sir.

25 Looks like I've got an objection from Mr. James

1 Mullis.

2 MR. EWING: Good morning, Your Honor. Randall Ewing
3 on behalf of James Mullis. We are counsel in the *Batton v.*
4 *NAR* action in the Northern District of Illinois.

5 The *Batton* claims are unique in two significant
6 ways. First, they're the only major case that is asserting
7 claims on behalf of homebuyers instead of home sellers. Our
8 theory, which has been sustained past motions to dismiss,
9 multiple motions to dismiss, is that the significant or all of
10 the commissions are passed through to homebuyers through
11 increased home purchase prices.

12 We see this through the Department of Justice's own
13 statement of interests, which says that the buyer/broker
14 commission rule ultimately harms homebuyers through higher
15 home prices. The *Batton* claims are also unique because unlike
16 many of the other objectors or other cases out there, these
17 were not recently filed after the verdict. The *Batton* claims
18 have been on the docket and actively litigated for three
19 years.

20 THE COURT: I don't know if you'll know the answer
21 to this question. When I first got this case, whenever that
22 was, apparently in 2019, there were efforts to consolidate up
23 in the Northern District of Illinois. Was yours one of those
24 that came up?

25 MR. EWING: No. Our case was filed in January of
21

1 2021. I believe that would have been the *Moehrl* case that
2 would have been the only pending case at that time.

3 THE COURT: Thank you.

4 MR. EWING: But the main point is these are
5 significantly valuable claims, valuable claims that are being
6 actively litigated, and they're significantly different than
7 the seller claims. We're not here trying to upend the
8 settlement. We're only here trying to ensure that the
9 homebuyer claims that have been actively litigated are not
10 being released, and we don't believe they should be released
11 for three reasons.

12 First, class members were not provided with notice
13 that the *Batton* claims were being released or that homebuyer
14 claims were being released in general. There's no mention of
15 *Batton* or homebuyer claims anywhere in the notices that were
16 sent out to class members.

17 In fact, there's even a section in the notice that
18 specifically -- FAQ to class members that says are there other
19 similar cases? This case is mentioned. *Moehrl* case is
20 mentioned. *Nosalek* case is mentioned. There's no mention of
21 *Batton* whatsoever, even though we believe those claims are as
22 -- or as valuable or more valuable even than the home seller
23 claims.

24 In fact, it wasn't until the proposed order two days
25 ago that it was made apparent that the parties believed that a

1 significant portion, up to 70 percent perhaps of the *Batton*
2 claims were being released through the proposed order.

3 We also believe the claims are being released for no
4 additional consideration. The claim form doesn't even ask
5 class members about their home purchases. There's no
6 indication that a plan of allocation is going to account for
7 the number of home purchases or the price of home purchases
8 whatsoever.

9 There's also no evidence in the record or put
10 forward by any party that these homebuyer claims were part of
11 the give and take of negotiations. Plaintiffs have put in a
12 statement saying that they interpret the release that way.
13 Anywhere has put in a statement saying it wouldn't have
14 settled without a release that included part of the *Batton*
15 claims, but yet there's nothing about those homebuyer claims
16 ever being litigated in this court, any discovery, or even any
17 back and forth as part of the negotiations whatsoever.

18 It's black letter law that valuable -- potentially
19 valuable significant claims cannot be released for no
20 additional consideration.

21 Third, we believe that if these claims were being
22 released, if the *Batton* claims were being released, it would
23 raise an inadequacy of representation issue and potential
24 conflicts of interest.

25 In antitrust actions, typically direct and indirect

1 purchaser claims, which is essentially what the *Batton* court
2 has ruled that our claims are, indirect claims, are
3 represented by separate counsel. And the reason that is, is
4 because of the conflict of interest that exists with respect
5 to the extent to which those damages were passed through from
6 the direct purchaser through the indirect purchaser. The
7 direct purchaser's interest is to say there was no
8 pass-through or as little pass-through as possible.

9 The indirect purchaser's interest is to say it was
10 entirely passed through or a large portion of it was passed
11 through. And that's an inherent conflict of interest that
12 cannot be represented by just one counsel.

13 And as the Supreme Court has stated, these type of
14 conflicts of interest become even more pronounced when you're
15 dealing with defendants that claim to have limited funds,
16 which is what the defendants here claim.

17 Now, the defendants and the parties say that there
18 are no nonoverlapping groups, and we don't believe that's
19 correct. There are people who only sold a home. You know
20 they may not be a large number, but for various reasons, there
21 are people who sell a home and do not purchase. And those
22 people's interest is for there to be no pass-through.

23 And then there are people who bought many more homes
24 than they sold, whether for investment properties or maybe
25 they traded up and paid a much higher purchase price. And

1 those groups of people's interests are to maximize the amount
2 of the pass-through.

3 And I don't believe that -- our position is that
4 these claims can't be resolved by the same counsel without any
5 sort of representation in the negotiations or the allocation.

6 I think the differences in these actions were even
7 reflected by class counsel when they filed their MDL petition
8 in the related action. They did not seek to include the
9 *Batton* actions. They said they didn't include the *Batton*
10 actions because they were different. And they are different.
11 So they shouldn't be released.

12 Alternatively we would ask that if you are going to
13 overrule the objection, that the scope of the release issue is
14 something that should be decided by the *Batton* court by Judge
15 Wood in the Northern District of Illinois. In the proposed
16 order that was sent to Your Honor two days ago, there's one
17 sentence in paragraph 57 that says, The homebuyer claims by
18 home seller class members indisputably arise out of the same
19 alleged conspiracy and the same factual predicates as the
20 asserted home seller claims.

21 First, we don't believe that's correct. The
22 mechanism of injury is entirely different. The class members'
23 perspective and their relationship to the transaction is
24 entirely different. This is often in many circuits called the
25 identical factual predicate test. And these claims are not

1 just identical.

2 So if Your Honor were inclined to overrule our
3 objection, we would also ask that that sentence be struck. We
4 believe it's premature for this court to make that conclusion
5 based on an undeveloped factual record. These issues are
6 normally decided at summary judgment or with discovery.

7 And then we would also ask in 63 where there is
8 language that would enjoin our claimants from currently
9 litigating the *Batton* case, we would ask that that be struck
10 because we believe at least with respect to the *Batton*
11 plaintiffs that we believe that Judge Wood is best positioned
12 to determine that.

13 And then the paragraph 87, I believe it is, which
14 has -- retains this court's exclusive jurisdiction to
15 interpret the scope of the release, as I mentioned earlier, if
16 you are going to overrule the objection, Judge Wood in the
17 Northern District of Illinois should be the court that
18 determines the scope of the release as it applies to the
19 *Batton* claims once there is a more developed factual record
20 and these differences or the lack thereof, as defendants may
21 claim, can actually be fleshed out and tested.

22 Thank you, Your Honor.

23 THE COURT: Thank you, sir.

24 Next I have an objection from -- maybe this is
25 redundant -- Robert Benjamin Douglas. I think we've already

1 heard from Mr. Knie. The rest of them I do not believe have
2 requested oral argument, but just for the sake of
3 thoroughness, is Cynthia Goralski, G-o-r-a-l-s-k-i, here?

4 How about Sharon Saunders, S-a-u-n-d-e-r-s?

5 We have an objection by Mr. Anthony Phillips.
6 Mr. Phillips? Jeffrey Nordquist, N-o-r-d-q-u-i-s-t. Larry
7 Giammo, L -- you can spell Larry. Giammo, G-i-a-m-m-o. Chia,
8 C-h-i-a, Whitehouse; Arturo Gonzalez, G-o-n-z-a-l-e-z, and
9 Drane Knizer, K- -- maybe it's Diane. I'm sorry. D-i-a-n-e,
10 Knizer, K-n-i-z-e-r.

11 Anyone else wish to be heard as an objector?

12 Mr. Dirks or Ms. Franklin?

13 MR. DIRKS: Thank you, Your Honor.

14 We'll try not to retread what's already set out in
15 the papers of plaintiffs and the defendants. So I'll keep it
16 short, but I do want to address a couple of what I hear are
17 new arguments that were not in the papers.

18 To start with, I want to talk about what we did not
19 hear. We didn't hear about the significant practice change
20 relief going forward. Everybody knows these defendants can't
21 pay the hundreds of billions of dollars that are being
22 discussed. But what they can do is make changes going forward
23 to save consumers money, and that's valuable relief in
24 addition to the relief that we were able to obtain monetarily.

25 We didn't hear about the more than 2,000 South

1 Carolina claimants who have already made claims on this
2 settlement. We didn't hear about the 6,000 -- more than 6,000
3 Pennsylvania claimants who have already made claims on this
4 settlement. They have a voice too.

5 We didn't hear anything about the increased
6 complexity. The war is over. What they want to do is start a
7 ground war and literally on dozens of courts across the
8 country starting from scratch. And what's that going to do?
9 That's going to only further drain the coffers of these
10 defendants as they litigate a groundwork across the nation.

11 It's going to mean there's no guarantee of payment
12 for these plaintiffs at all, no practice change guarantee.
13 Inconsistent results could possibly appear across the country
14 and the court's dockets are going to be flooded with these
15 cases.

16 There is -- this wasn't in the papers. There was a
17 discussion about the JPML. The JPML, my understanding is,
18 denied transfer because they said, well, there's all these
19 settlements already, let's let that process occur.

20 That was their reasoning.

21 THE COURT: Mr. Dirks, when you're able to figure
22 out what the JPML is doing, there's a couple other lawyers in
23 this country that would like your insights.

24 MR. DIRKS: I'm right there with you, Your Honor.

25 One of the new things we heard today is that, oh,

1 these folks are only getting X dollars. I don't think that
2 these lawyers understand. This is a nonreversionary
3 settlement. As of today, if you take 200,000 and you divide
4 that by the pot of money out there, these folks are getting
5 way more. We're talking in the hundreds, and, of course,
6 there's more money on the way with the NAR and other
7 settlements that are coming in the door.

8 The papers set out, so I won't do it in great
9 detail, there would be no deal unless there was a nationwide
10 deal. That's something that we heard today that's brand new
11 is this isn't fair to the Missouri class. Yes, it is, because
12 there could be no recovery to the Missouri class absent a
13 nationwide settlement. None of these companies could pay the
14 judgment. They were going bankrupt, and this was the only way
15 to get relief for Missouri and the nationwide class.

16 Professor Alford, I'm sure he's a great guy, but you
17 know what he didn't do? He didn't give an opinion as to the
18 fairness, reasonableness, or adequacy of the settlement.
19 There's nothing in there that discusses that. He didn't even
20 give an opinion as to the correct amount of the settlement in
21 his view.

22 I'll let Ms. Franklin talk about the *Batton*
23 objection quickly.

24 Couple other new things, that we misrepresented the
25 settlement and the notice. That's not true. I've got the

1 notice right here. The court approved it. It went out. It's
2 on the website. There's also frequently asked questions on
3 the website. It absolutely tells the class what they were
4 giving up and what they're getting.

5 He also said we didn't tell them what our costs and
6 fees were. We filed a motion, motion -- docket 1392, I
7 believe, which we're asking the court to grant today as well.

8 They said we didn't do discovery. Yeah, we did. We
9 had nationwide data. We had experts who were talking about
10 Pennsylvania throughout this litigation.

11 Those are the new arguments I heard and the ones I
12 wanted to address. If the court has any questions, I'm happy
13 to answer them, and I think Ms. Franklin may want to have a
14 few words about the buyer objection.

15 THE COURT: While you're standing up, you wanted me
16 to grant a Rule 54(b) motion --

17 MR. DIRKS: Yes, Your Honor.

18 THE COURT: -- that I previously denied. What I'd
19 like to do because this is involving a nationwide class and so
20 many people are unable to attend here today and I didn't allow
21 people to call in, I'd like for you to just file a brief
22 motion if the defendants all agree to it. It doesn't need to
23 be more than a sentence, and that way there's something on the
24 docket that I can point to so if there's anything other than
25 the final motion for approval, 1469, that you'd like me to do,

1 just file another motion, and we'll -- if there's no
2 opposition, we can get it done.

3 MR. DIRKS: Okay. We will do that, Your Honor.

4 THE COURT: Thank you.

5 Ms. Franklin, ma'am.

6 MS. FRANKLIN: Thank you, Your Honor. Beatrice
7 Franklin on behalf of the settlement class. I'm going to
8 address the *Batton* plaintiffs' objections. Again I don't want
9 to retread what was in our papers; so I just want to emphasize
10 a few points.

11 First, as to the request that we're hearing for the
12 first time today that it should be Judge Wood who decides the
13 scope of the releases in our settlement agreements, for
14 several reasons that request should be rejected. Perhaps
15 first and foremost, Judge Wood has already rejected that.

16 As I think the court is aware, the *Batton* plaintiffs
17 filed a motion for a temporary restraining order early
18 yesterday morning. Judge Wood promptly denied it in large
19 part because she noted that these issues are squarely in front
20 of this court and it should be this court who decides the
21 objectors' arguments.

22 Second, this court is obviously the court that has
23 jurisdiction over the settlement. It is this court that has
24 preliminarily approved the settlement, that the settlement
25 agreements provide for exclusive jurisdiction of this court.

1 So, frankly, I'm not sure what the basis is for Judge Wood to
2 be interpreting anything related to the settlements.

3 Next I want to emphasize that there is no homebuyer
4 class that's been certified anywhere in the country. So that
5 takes this case outside of the realm of the authority on which
6 the *Batton* plaintiffs largely rely. This is not an *Amchem*
7 case. This is not an *Ortiz* case. What this is, is a case
8 where the settlement provides for a release of any claims that
9 arise at the same factual predicates as the claims are pleaded
10 in this action.

11 So what that means is that members of this
12 settlement class, home sellers, are agreeing to release any
13 claims that they have that arise out of the same factual
14 predicates, which may also include homebuyer claims. This is
15 routinely done in antitrust class action settlements and in
16 all other kinds of settlements and is routinely approved by
17 courts around the country.

18 For particular authority, I would direct the court
19 to *Uponor* 716 F.3d 1057; *Petrovic*, 200 F.3d 1140; *General*
20 *American* 357 F.3d 800; and the *Walmart* case, which is really
21 on all fours with this one, 396 F.3d 96.

22 Next there can be no serious question that notice
23 here was adequate. The language of the settlement is very
24 clear about the claims that are being released, claims arising
25 out of the same factual predicate, including specifically

1 claims related to the home price that any of the settlement
2 class members may have. That release claims language was
3 included in the notice. It was included on the website. It
4 was included in the FAQs.

5 So, again, in many of those authorities that I just
6 listed, courts have specifically said that notices that
7 highlight the settlement language itself or point to the
8 settlement language itself, point to the release provisions,
9 that is adequate notice and it provides no reason not to
10 approve a settlement.

11 And, finally, I want to say that it's simply wrong
12 that these claims are being released without consideration.
13 As the defendants made abundantly clear in their papers and as
14 was very clear during the settlement negotiation process,
15 these settlements would not have happened if class members
16 were not releasing all of their claims arising out of the
17 underlying conduct.

18 So what's happening is that the home sellers are
19 getting more money for the class, more money for their claims
20 because they are agreeing again, as is routinely done, to
21 release all of their claims. There are -- *Batton* is still
22 going to be able to go forward. There will still be
23 plaintiffs who are not class members who have not released
24 their claims who still have buyer actions. We're not
25 extinguishing the *Batton* cases entirely.

1 What we are doing is achieving global peace for our
2 class members, including our class representatives, many of
3 whom both bought and sold homes and clearly believe that this
4 settlement is fair, reasonable, and adequate.

5 Unless the court has further questions, I'm happy to
6 rely on our papers.

7 THE COURT: Thank you, ma'am.

8 MS. FRANKLIN: Thank you, Your Honor.

9 THE COURT: Anything else from the defense side?

10 MR. VAN OORT: Your Honor, Mr. Dirks and
11 Ms. Franklin covered all the legal points. I just want to
12 emphasize what Ms. Franklin just said.

13 I negotiated the first settlement, and my client
14 gave me very clear directions that I was not to settle on
15 anything other than a nationwide class and I was not to settle
16 on any basis that would have the same people suing us again
17 for claims arising out of the same antitrust conspiracy. And
18 we fought hard on that. Without disclosing mediation, what
19 plaintiff said is exactly right. There would be no settlement
20 without these terms, and because they have defended that as
21 fair, reasonable, and adequate, and it is, we, again, strongly
22 support approval, Your Honor.

23 MR. LeVEE: Morning again, Your Honor. Jeff LeVee
24 on behalf of RE/MAX. I'll be very brief.

25 First, in response to the South Carolina objectors'

1 reference of certain financial information that he attributed
2 to RE/MAX, that financial information actually is Anywhere's
3 financial information, not RE/MAX. Just for the record.

4 Second, and I want to be clear, and I believe this
5 would be on behalf of all the defendants who are here, the
6 settling defendants, RE/MAX would only have settled on a
7 nationwide basis. It would have made no sense for RE/MAX to
8 fund on an ability-to-pay basis millions of dollars only to be
9 able to be sued in multiple other states. Wouldn't have done
10 it.

11 Finally, RE/MAX would only have settled if its
12 franchisees were included in the release. There would have
13 been no economic reason for RE/MAX to settle the case so that
14 it would know that the following day its thousands of
15 franchisees across the country could have then been sued. We
16 just wouldn't have done it.

17 So we endorse what plaintiffs' counsel has said, and
18 we thank you, Your Honor.

19 MR. BERSHTEYN: Your Honor, Boris Bershteyn for
20 Keller Williams. For Keller Williams, we respectfully join
21 the comments from Mr. Dirks, Ms. Franklin, and our colleagues
22 from Anywhere and RE/MAX, and I'll just add two very brief
23 points.

24 First, you heard South Carolina objectors make
25 mention of alleged deficiencies in the notice. For the

1 reasons Mr. Dirks said and for the reasons in the papers, the
2 notice is ample. So those objections are meritorious, but I
3 will just add that those objections are also not preserved.
4 Nowhere in the timely objection the South Carolina objectors
5 filed did they raise any concerns about the notice in this
6 case.

7 Secondly, Keller Williams respectfully asks Your
8 Honor to deny the South Carolina objectors' request for
9 discovery from Keller Williams. Under circumstances like
10 this, the law is clear. Objectors are not entitled to
11 discovery and to materials exchanged during settlement
12 negotiations. There might be exceptional circumstances in
13 cases where there are credible allegations of a collusive
14 settlement. There's no suggestion, let alone evidence that
15 settlement here has been anything but extraordinarily hard
16 fought. To entertain discovery now would only delay these
17 proceedings for no legitimate purpose.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 Well, I'm going to grant plaintiffs' motion for
21 final approval of settlements, Document No. 1469, and overrule
22 all objections. We will get the order out and posted today.

23 If there's any other residual motions, Mr. Dirks,
24 that you need done, again, shorter is better than a longer
25 motion, and please only file things that the defendants have

1 consented to so we don't have to exhaust two weeks to get
2 their response. But thank you.

3 If anybody knows that this was a hard fought -- we
4 had motions in limine on things going on in Pittsburgh that I
5 ruled on, and we spent almost five full years working on this
6 case, and as we talk about MDLs, no offense to any of the
7 lawyers at Horn Aylward & Bandy, this case sucked up a lot
8 more time than my MDL case did. Nothing against you lawyers.
9 You guys just fought hard and most of the time fought
10 respectfully.

11 MR. KETCHMARK: Duly noted.

12 THE COURT: Thank you. We'll be in recess.

13 *****

14 REPORTER'S CERTIFICATE

15
16 I certify that the foregoing pages are a correct
17 transcript from the record of proceedings in the
18 above-entitled matter.

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Date

/s/Gayle M. Wambolt
GAYLE M. WAMBOLT, CRR, RMR
United States Court Reporter